

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2150

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Atwater and others

SUBJECT: Nursing Homes

DATE: April 2, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute would permit the resident care plans for nursing home residents to be reviewed and signed by a nurse other than the director of nursing of the facility. A registered nurse to whom institutional responsibilities have been delegated could sign the plan in lieu of the director of nursing.

The bill requires the Agency for Health Care Administration (AHCA) to notify licensed facilities, by regular mail or electronically, at least 120 days before the expiration of the facility's license that the facility license is due to expire.

Revisions to the nursing home licensure statutes permit sharing of staff if a facility has a standard license or the Gold Seal designation and is part of a retirement community, including a continuing care facility, which includes an assisted living facility, home health agency or an adult day care center, provided minimum staffing levels are met. If a facility receives a conditional license, it may not share staff until the conditional licensure status ends.

The bill removes the requirement that minimum staffing ratios established for certified nursing assistants and licensed nurses be maintained at all times; instead, nursing homes that were not on the Nursing Home Guide Watch List would demonstrate that they meet staffing standards by the calculation of a weekly average, and daily staffing would have to be no less than 95 percent of the required minimum staffing level. The bill deletes the requirements that there be one certified nursing assistant per 20 residents and one licensed nurse per 40 residents and maintains current minimum staffing requirements for the night shift. Nursing homes on the watch list would have to meet required staffing ratios every day and could not use a weekly average to show compliance.

This bill revises the financial criteria that nursing homes must meet to be eligible for recognition through the Gold Seal Program by accepting the Office of Insurance Regulation's approval of financial standards for nursing homes that are a part of the same corporate entity as a Continuing Care Retirement Community (CCRC) that is accredited by a recognized accrediting organization, provided the accreditation is not provisional.

This bill amends ss. 400.021, 400.111, 400.141, 400.23, and 400.235, F.S.

II. Present Situation:

Under s. 400.021, F.S., nursing homes are required to have all resident care plans signed by the director of nursing as a means of ensuring that there is a comprehensive and objective clinical review of the residents' care. The current procedure requires that the director of nursing sign these plans as a means of confirming that the plan is based on comprehensive and objective clinical evaluation on the part of a nurse who is not directly involved in the day to day care of the resident.

Under s. 400.111, F.S., AHCA requires nursing homes to complete an application for the annual renewal of the license by accessing the necessary forms on the agency website and submitting that application and supplementary documents ninety days before expiration of the existing license. Nursing home administrators, who are required by their licensure to be familiar with the statutes governing nursing homes, should be familiar with the requirement that the application is to be submitted ninety days before licensure.

Staffing standards for nursing homes are established in s. 400.23, F.S. During the years 2002 through 2004 staffing standards are being increased as a way to ensure quality care for nursing home residents. The current requirement for certified nursing assistant (CNA) staffing is 2.6 hours per resident per day. The requirement will increase to 2.9 hours per resident per day after January 1, 2004. The requirement for licensed nurses (LNs) is 1 hour per resident per day. The statute also requires staffing ratios that provide at least one LN to 40 residents and at least one CNA to 20 residents at all times. AHCA may approve the use of an LN to perform both CNA and LN services. The employee's hours may not be counted twice and the facility must allocate the amount of time spent on certified nursing assistant duties in order to document compliance with staffing requirements. Under s. 400.141, F.S., a nursing home that has failed to comply with state minimum staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the staffing requirements have been met for a period of 6 days.

Under s. 400.191, F.S., AHCA must publish quarterly a Nursing Home Guide Watch List to assist consumers in evaluating the quality of nursing home care in Florida. The watch list must identify each facility that met the criteria for conditional licensure status on any day within the quarter covered and each facility that was operating under bankruptcy protection on any day within the quarter. The watch list is published in a booklet and on AHCA's website.

Under s. 400.23, F.S., a conditional licensure status is assigned to a facility that:

- Has been cited for one or more class I or class II deficiencies or class III deficiencies not corrected within the time established by AHCA; or

- Is not in compliance with the requirements of s. 400.23, F.S., or rules at the time of a survey by AHCA.

If the facility has no class I, class II, or class III deficiencies at the time of a follow-up survey, the facility's licensure may be returned to standard status.

The Governor's Panel on Excellence in Long Term Care works in conjunction with AHCA to carry out the Gold Seal Program as authorized in s. 400.235, F.S. One of the criteria established by that Panel is the financial stability of nursing homes requesting recognition through this program. The Panel and AHCA have developed standards that require applicants to present detailed audited financial information to the Panel. Continuing Care Retirement Communities (CCRC) include nursing homes and may also include assisted living facilities and home health agencies, each licensed separately under the appropriate statutory part of ch. 400, F.S. CCRCs also include independent living arrangements such as houses and apartments where services may be provided. The Office of Insurance Regulation regulates CCRCs under authority of ch. 651, F.S. CCRCs are regulated as a form of specialty insurance provider as there is generally a substantial initial investment by the resident with the CCRC committing to providing life-long care. The Office of Insurance Regulation monitors the financial reserves maintained by the CCRC to ensure that sufficient funds are available to meet the obligations to the residents. Existing nursing home licensure statutes permit sharing of staff if a facility has a standard license or the Gold Seal designation and is part of a retirement community (including a CCRC) which includes an assisted living facility, home health agency or an adult day care center, with the provision that the facility be able to demonstrate that staffing at the facility exceeded minimum standards.

III. Effect of Proposed Changes:

Section 1. Amends subsection (17) of s. 400.021, F.S., related to resident care plans, to authorize a registered nurse to whom institutional responsibilities have been delegated to sign the plan in lieu of the director of nursing. This revision would permit a nurse, other than the director of nursing, to sign the resident care plan developed for each individual resident.

Section 2. Amends subsection (1) of s. 400.111, F.S., to require AHCA to send, by regular mail or electronically, a notice to each of Florida's 669 nursing homes advising the facility when its license is due to be renewed. At least 120 days before the expiration of a license, AHCA would notify the facility that a renewal license is necessary to continue operating.

Section 3. Amends subsection (7) and paragraph (d) of subsection (15) of section 400.141, F.S., to revise conditions under which the facilities on a CCRC campus could share staff. Existing nursing home licensure statutes permit sharing of staff if a facility has a standard license or the Gold Seal designation and is part of a retirement community, including a CCRC, which includes an assisted living facility, home health agency or an adult day care center, with the provision that the facility be able to demonstrate that staffing at the facility, *exceeds* minimum standards. In the proposed change, those facilities sharing staff must *meet* the same minimum staffing ratios for certified nursing assistants (CNAs) as required elsewhere in the nursing home statute: 2.6 hours per resident per day during calendar year 2003 and 2.9 hours per resident per day after January 1, 2004; and for licensed nurses (LNs), 1 hour per resident per day. The bill provides for compliance with required staffing ratios be met through counting residents served by nursing

home staff (LNs and CNAs) anywhere on the campus, rather than just in the nursing home. The bill specifies that the facility would not be eligible for such program and staff sharing during the time that the facility has a conditional license. Further, the bill does not restrict AHCA's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of CNAs or LNs. This section changes the statutory reference to staffing minimums to be consistent with changes made in Section 4 of this bill.

Section 4. Amends paragraph (a) of subsection (3) of s. 400.23, F.S., to change the method for calculating compliance with minimum staffing standards in nursing homes. The bill would remove the requirement that minimum staffing ratios established for CNAs and LNs be maintained "at all times". Under the provisions of the bill, nursing homes that are not on the Nursing Home Guide Watch List could demonstrate that they meet staffing standards by the calculation of a weekly average, and daily staffing would have to be no less than 95 percent of the required minimum staffing level. The bill deletes the requirements that there be at least one CNA per 20 residents and at least one LN per 40 residents. The minimum staffing ratio of 0.4 hours CNA and 0.2 hours licensed nurse with a minimum of one CNA and 1 licensed nurse on duty at all times, would still be required on the night shifts, between 11:00 p.m. and 7:00 a.m. The current requirement that AHCA must approve the use of an LN to perform both LN and CNA duties is deleted, thus permitting a nursing home to decide when to assign an LN to perform both LN and CNA duties. However, as under current law, the hours of an LN may not be counted twice. The nursing home must document the amount of time spent on CNA duties and LN duties in order to document compliance with minimum staffing standards.

A nursing home on the watch list must provide 2.6 hours of CNA care per resident per day and 1 hour LN care per resident per day. The requirement for CNA care will increase to 2.9 hours per resident per day after January 1, 2004. A nursing home on the watch list must have staffing ratios that provide at least one LN to 40 residents and at least one CNA to 20 residents at all times. Nursing homes on the watch list could only count the work of full-time CNAs in computing staffing ratios.

The bill prohibits AHCA from citing a nursing home for noncompliance with the minimum staffing requirements during any period in which the Governor has declared a state of emergency under the provisions of s. 252.36, F.S., and the facility is located in an affected geographical area.

Section 5. Amends paragraph (b) of subsection (5) of s. 400.235, F.S., to provide that a CCRC that satisfies the minimum liquid reserves requirements specified in s. 651.031, F.S., will be deemed to be financially stable for purposes of the Gold Seal program. The proposed changes would require the Governor's Panel on Excellence in Long Term Care to accept satisfying the CCRC minimum liquid reserves required as determination of acceptable financial reserves for the purposes of demonstrating the financial stability of the nursing home, if the CCRC satisfies rules of the Office of Insurance Regulation, and is accredited by a recognized accrediting organization, provided that accreditation is not provisional. This alternative would apply when the nursing home is applying for Gold Seal recognition as part of the same corporate entity as an accredited CCRC, and it would also apply to nursing homes that are freestanding nursing homes (not part of a CCRC) that are part of the same corporate entity as an accredited CCRC.

Section 6. Provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides nursing homes greater flexibility in meeting the minimum staffing requirements established in law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.